

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

**No. 05-1120V**

**Filed: 12 January 2010**

\* \* \* \* \*  
SCOTT BERGER,  
  
Petitioner,  
  
v.  
  
SECRETARY OF HEALTH AND  
HUMAN SERVICES,  
  
Respondent.  
\* \* \* \* \*

*Curtis R. Webb, Esq.*, Webb, Webb & Guerry, Twin Falls, Idaho, for Petitioner;  
*Michael Patrick Milmo, Esq.*, United States Department of Justice, Washington, District of  
Columbia, for Respondent.

**UNPUBLISHED DECISION<sup>1</sup>**

**ABELL**, Special Master.

On 18 December 2009, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Scott Berger, Petitioner, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. Petitioner, Scott Berger, filed a Petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 *et seq.* (the “Vaccine Program”). The Petition seeks compensation for injuries allegedly related to his receipt of a Tetanus-Diphtheria (“Td”) vaccine, which vaccine is included on the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).

2. Petitioner received his immunization on 6 August 2003.

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<sup>1</sup> Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

3. The vaccine was administered within the United States.

4. Petitioner alleges that he suffered joint pain and/or arthralgia which was caused-in-fact by the Td vaccine he received on 6 August 2003.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.

6. Respondent denies that Petitioner suffered joint pain and/or arthralgia as a result of the Td vaccine and denies that Petitioner's current disabilities are caused by any vaccination he received.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in Paragraph 8 of this [Decision].

8. As soon as practicable after an entry of judgment reflecting [this Decision], and after Petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services [shall] issue the following vaccine compensation payments:

A lump sum of \$60,000.00, in the form of a check payable to Petitioner[, which] amount represents compensation for damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after Petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the [Undersigned will] preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this Petition.

10. Payment made pursuant to paragraph 8 and any amount awarded pursuant to paragraph 9 of this [Decision] [shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties and their attorneys further agree and stipulate that the money provided pursuant to this [Decision] [shall] be used solely for the benefit of Petitioner, Scott Berger, as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

12. In return for the payments described in paragraphs 8 and 9, Petitioner, in his individual capacity and on behalf of his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Petitioner, resulting from, or alleged to have resulted from, the Td vaccination administered to him on 6 August 2003, as alleged by Petitioner in a petition for vaccine compensation filed on 17 October 2005, in the United States Court of Federal Claims as petition No. 05-1120V.

13. If Petitioner should die prior to receiving the payment described in paragraph 8, [the Stipulation] shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the discretion of either party.

15. This [Decision] expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

16. All rights and obligations of Petitioner hereunder shall apply equally to Petitioner's successors and assigns.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

**IT IS SO ORDERED.**

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**Richard B. Abell**  
Special Master